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No. 97-83

In The

Supreme Court of the United States

October Term, 1997

THE GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH, SOUTH SIDE, PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*

Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Do some former members of the parochial congregations of two Roman Catholic Churches, which have ceased to exist according to the laws of the Roman Catholic Church, have standing in civil court to assert property rights which they claim to have had in their capacity as members of those former parochial congregations?

2. Would a civil court lack jurisdiction to decide the church property issues involved in this action on the basis of "neutral principles of law" because those issues are inextricably intertwined with purely ecclesiastical matters?

3. Could the relief requested by Plaintiffs be granted without violating the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution?

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COUNTER-STATEMENT OF THE CASE

This case involves a church property dispute brought by certain individuals who claim to represent the Roman Catholic Congregations of Roman Catholic Churches within the Diocese of Pittsburgh against the Most Reverend Donald W. Wuerl, the Roman Catholic Bishop of the Diocese of Pittsburgh.

Both of the Churches involved were established according to the laws of the Roman Catholic Church. The Bishop of Pittsburgh gave each Church its name, assigned a pastor to it and defined the membership of the Roman Catholic Congregation of the Church.

These disputes arose out of a lengthy diocesan-wide parish reorganization and revitalization process which was begun in 1989. That process was undertaken to determine how best to reorganize the parishes within the Diocese so as to more equitably distribute the resources (financial, material and human) of the Church and to better serve the spiritual needs of all Catholics in the Diocese of Pittsburgh. *See*, Duch Affidavit, filed in support of Defendant's Cross-Motion for Summary Judgment and incorporated in the Reproduced Record filed with the Superior Court at R.1522a-1561a (hereinafter "Duch Affidavit").

As a result of this diocesan-wide reorganization project, Bishop Wuerl issued Decrees of Suppression for several parishes, including St. Michael's and Immaculate Conception. Those decrees provided that all members of the parochial congregations of the suppressed parishes would become members of newly established successor parishes. The Decrees also provided that all assets and

liabilities of those suppressed parishes were to be assumed by the successor parishes in accord with the law of the Church. All official Church records also were conveyed to the successor parishes to be faithfully preserved according to Canon Law. *See*, DiNardo Affidavit, filed in support of Defendant's Cross-Motion for Summary Judgment and incorporated in the Reproduced Record filed with the Superior Court at R.1402a-1520a (hereinafter "DiNardo Affidavit"), at R.1486a-1487a.

Displeased with the Bishop's decisions to suppress these parishes and reassign them to successor parishes, Petitioners filed suit in civil court against Bishop Wuerl. They claimed to be members of "The German Roman Catholic Congregation of Saint Michael's Church," and "The Roman Catholic Congregation of Immaculate Conception Church," and claimed to have standing to bring these actions on behalf of those congregations.

The Petitioners alleged in each case that they had acquired ownership of certain real properties described in deeds attached to the Complaints. None of these deeds, however, conveyed the real properties in question to Roman Catholic Congregations (the entities on whose behalf Petitioners claim to act). Rather, those deeds conveyed properties to the Roman Catholic Bishop of Pittsburgh and his successors as Trustees.

The Petitioners also claim that certain personal property (*e.g.*, statues, religious articles) belonged to them in trust. However, the record contains no evidence of any trust instruments relating to any of the personal property at issue here.

The Petitioners alleged that, in suppressing the parishes, the Bishop violated various provisions of the Code of Canon Law – the governing ecclesiastical law of the Roman Catholic Church. They also alleged that in failing to comply with Canon Law, the Bishop violated a Pennsylvania statute, the Act of June 30, 1935, P.L. 353, 10 P.S. § 81 (hereinafter "the Act of 1935").

Having claimed numerous violations of church law and various violations of state law stemming from these alleged violations of church law, the Petitioners sought injunctive relief and requested that the trial court issue an order: 1) rescinding the Bishop's ecclesiastical decisions and decrees which suppressed the parishes and closed the churches; 2) reopening the churches; 3) enjoining the Bishop from disposing of any of the property in question, including transferring those properties to the respective named successor parishes in accordance with the laws of the Roman Catholic Church; and 4) requiring the Bishop to transfer all personal properties, monies, books and records of the suppressed parishes to the Petitioners. If the Bishop should fail to comply with such order, the Petitioners also requested the civil courts to appoint a substitute trustee who would succeed to the "fiduciary duties" of Bishop Wuerl.

In addition to this relief, the Petitioners requested the court to compel the Bishop to provide a complete accounting of all the disputed properties. Alternatively, they requested the court to declare that the Act of 1935 violated various provisions of the United States Constitution, and to declare that Petitioners possessed a legal estate, a property right and a beneficial interest in the real

and personal properties which are the subject of this dispute.

Bishop Wuerl responded by claiming: 1) that Petitioners lack standing to bring these actions because the Roman Catholic Congregations to which they claimed to belong and which they claimed to represent had ceased to exist upon their suppression and Petitioners were now members of other successor parishes; 2) civil courts lack jurisdiction to resolve the purely ecclesiastical issues presented for review; and 3) none of the relief sought could be granted without violating the Constitutions of the United States and Pennsylvania.

Relying on a long and unbroken line of Pennsylvania Supreme Court precedent, the trial court and Superior Court dismissed this action based on Petitioners' lack of standing and based also on the fact that civil courts lack jurisdiction to review ecclesiastical decisions concerning the suppression of parishes and the effect thereof on church membership. Petitioners appealed that adverse judgment to the Pennsylvania Supreme Court and that Court denied review.

SUMMARY OF ARGUMENT

Pennsylvania law ("the Act of 1935") provides that church properties are to be controlled and disposed of according to church law. Petitioners claim to be members of the parochial congregations of two Roman Catholic churches and to have standing to assert property rights on behalf of those parochial congregations as against the

Roman Catholic Bishop of Pittsburgh. The Roman Catholic Church has declared that the entities to which Petitioners claim to belong no longer exist, due to their valid suppression by ecclesiastical decrees, and that Petitioners are now members of new successor parishes which were established by valid ecclesiastical decrees.

In short, Petitioners are not members of the parochial congregations to which they claim to belong and, accordingly, they lack standing to bring this action on behalf of those congregations.

The state courts so held, and the central issue presented for review in this Court is whether Petitioners lack standing to assert any property rights on behalf of the parochial congregations to which they previously belonged. Every claim made by Petitioners in an attempt to support their standing to bring this action is inextricably intertwined with and draws into question the practices, doctrines and laws of the Roman Catholic Church and would require civil courts to make judgments regarding those purely ecclesiastical issues.

The decision of the state court is in complete conformity with prior decisions of this Court and, indeed, is mandated by those decisions. Petitioners' lack of standing to claim any property rights in the church properties in question is not limited to the state law questions which already have been resolved. They also lack standing to raise each of the federal constitutional issues which they have presented for review.

Moreover, even if Petitioners had standing to raise the federal questions presented for review, there is no

merit to the argument put forward by Petitioners regarding alleged violations of various provisions of the United States Constitution.

REASONS FOR DENYING THE PETITION

The Petition for Writ of Certiorari filed in this matter is virtually identical to that which was filed with this Court in *Croatian Roman Catholic Congregation of the Holy Trinity Church, et al. v. Wuerl*, No. 96-937. On February 18, 1997, this Court denied certiorari in that matter. ___U.S. ___, 136 L.Ed. 2d 842, 117 S.Ct. 956 (1997). The reasons for denying review set forth in Bishop Wuerl's Brief in Opposition to that prior petition are the same as those presented to this Court in opposition to this petition.

Petitioners argue that this Court should grant review for two reasons. First, they argue that the decisions of the Pennsylvania court to dismiss their claims based on lack of standing and lack of jurisdiction to decide ecclesiastical issues is in conflict with this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979). Petition at 7. Next they argue that Pennsylvania's church property law (the Act of 1935) is unconstitutional under various provisions of the United States Constitution and that these are important federal issues, which should be addressed by this Court. *Id.* at 7-10. For the reasons set forth in greater detail below, this Court should deny review.

I. PETITIONERS LACK STANDING TO BRING THIS ACTION, AND THE DECISION OF THE PENNSYLVANIA COURT IS IN COMPLETE CONFORMITY WITH THE DECISIONS OF THIS COURT.

The Pennsylvania Supreme Court long ago pointed out that "any rights which the laity may have in church property can arise only out of membership in the congregation." *Post v. Dougherty*, 326 Pa. 97, 101, 191 A. 151, 153 (1937). That Court also recognized that church membership is purely an ecclesiastical matter for determination by church authorities; not by civil courts. *Id.* The Court noted that "[u]nder the Roman Catholic canons the suppression of a parish renders it extinct." *Id.* at 99, 191 A. at 152. Accordingly the Court continued:

> The effect of the suppression of the parish was to cause the lay members to lose their membership therein, and become members of another parish. Having lost their membership in the parish, they have no standing to maintain a bill in equity to enforce any property rights which they may have had in their former capacity as members of the parish.

Id. at 102, 191 A. at 153. *See also, Canovaro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76, 84-85, 191 A. 140 (1937) ("Division, dismemberment, or suppression of parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals."); *St. Peter's Roman Catholic Parish v. Urban Redevelopment Authority of Pittsburgh, et al.*, 394 Pa. 194, 198, 146 A.2d 724, 726 (1958), *cert. denied*, 359 U.S. 435 (1959) ("The dispositive rule is that plaintiff, as a parish

or congregation, has no standing to sue. The Bishop owns the property, in trust for the parish, and alone may dispose of it in accordance of the Canons of the Roman Catholic Church.")

The Superior Court, in rendering its decision in this case, relied upon the above Pennsylvania Supreme Court precedent and the recent decision issued by a different panel of the Superior Court which held that Petitioners lacked standing to bring such actions. *See, Croatian Roman Catholic Congregation v. Wuerl*, 447 Pa. Super. 208, 668 A.2d 1151 (1995), *appeal denied*, ___ Pa. ___, 683 A.2d 884 (1996), *cert. denied*, ___U.S. ___, 136 L.Ed. 2d 842 (1997).

The above state court decisions are in complete conformity with those of this Court which prohibit civil courts from making judgments regarding purely ecclesiastical matters. *See e.g., Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich, et al.*, 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); and *Watson v. Jones*, 13 Wall. 679 (1871).

Indeed, those state court decisions were mandated by the above decisions of this Court which protect the right of religious bodies to self-governance and prohibit civil authorities from intruding upon that right. Among the matters described by the *Watson* Court as "strictly and purely ecclesiastical" and within the purview of ecclesiastical tribunals, are matters which concern "ecclesiastical government." *Id.* In matters such as these, the "rule of deference" must apply.

Ecclesiastical determinations regarding church membership lie at the core of religious self-governance. The

right of religious societies to make such determinations without governmental interference is protected by the Free Exercise Clause of the First Amendment, and by non-entanglement principles contained in the Establishment Clause of the First Amendment.

Petitioners suggest that this Court's decision in *Jones v. Wolf* requires that the "rule of deference" be disregarded and "neutral principles" be applied when a case involves church property. That case, however, stands for no such proposition. *Jones* holds only that, in church property disputes, a "severely circumscribed" exception to civil court non-intervention may apply where the issues are capable of being determined without resolution of underlying ecclesiastical questions. 443 U.S. at 602-603. Where ownership of church property is to be determined "according to the 'laws and regulations' of the [church], then the First Amendment requires that the [state] courts give deference to the [church's] determination." *Id.* at 609.

The issues presented for review in this case are anything but devoid of ecclesiastical questions. The very standing of Petitioners to bring this action turns upon the meaning and effect of the Canon Law of the Roman Catholic Church.

Petitioners have claimed that they are members of the parochial congregations which they claim to represent and that they have property rights based on such membership. They base these claims on assertions that the Bishop's ecclesiastical decrees of suppression were invalid because he violated numerous provisions of

Canon Law in issuing those decrees.[1] Thus, Petitioners claim that the parochial congregations to which they previously belonged continue to exist and that they continue to be members of those congregations.

Bishop Wuerl has asserted that the parishes were validly suppressed and that, under the laws of the Roman Catholic Church, Petitioners are not members of the parochial congregations which they claim to represent. Moreover, the Bishop has also asserted that, under Canon Law, even if Petitioners continued to be members of those parochial congregations, they still would be prohibited from bringing these actions and therefore lack standing.[2]

If Petitioners are not members of those congregations, they can claim no property rights whatsoever. The same is true if, as Bishop Wuerl has asserted, members of Roman Catholic churches do not acquire any property rights by virtue of their membership.[3]

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[1] Petitioners' ecclesiastical appeals questioning the validity of Bishop Wuerl's decrees were unsuccessful.

[2] Even if Petitioners continued to be members of those congregations, the laws of the Roman Catholic Church prohibit individual members of a congregation from suing on behalf of the parochial congregation. Only the Pastor of the parish is entitled to file suit on behalf of a parish congregation. *See*, Defendant's Cross-Motion for Summary Judgment, incorporated in the Reproduced Record filed with the Superior Court at ¶¶ 44-47, R.1384a-1385a. Moreover, under Canon Law, even a pastor is prohibited from initiating an action in civil courts without the consent of the Bishop. *Id.*

[3] According to the Canon Law of the Roman Catholic Church, only juridic persons may own church property, *see*, DiNardo Affidavit at ¶¶ 12-13, R.1406a-1407a, and Petitioners have conceded that they are not juridic persons. Thus, they

Under this Court's prior precedent, civil courts must defer to ecclesiastical tribunals regarding the meaning and effect of ecclesiastical laws. The Church has determined that, pursuant to its laws, Petitioners are not members of the congregations they claim to represent and that they would not have any property rights even if they were. The civil courts are constitutionally bound to defer to these ecclesiastical determinations. Accordingly, Petitioners have no protectable property rights and lack sufficient standing to satisfy Article III which requires the existence of a case or controversy for the exercise of this Court's jurisdiction.

II. THE STATE COURT HAS NOT RENDERED ANY DECISION WITH RESPECT TO THE FEDERAL QUESTIONS RAISED BY PETITIONERS, AND THE PENNSYLVANIA CHURCH PROPERTY LAW IS CONSTITUTIONAL.

A. The State Court Did Not Address Any Federal Questions Raised by Petitioners.

Petitioners are mistaken in claiming that the state court decided important federal questions which should be reviewed by this Court. Petition at 7. To the contrary, the state court never reached any of the federal questions raised by Petitioners. Rather, it dismissed the actions

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would not have standing to assert rights to the properties in question even if they continued to be members of these churches.

based on Petitioners' lack of standing. Having determined that Petitioners were not members of the congregations to which they claimed to belong, the state court simply refused to proceed further.

B. Pennsylvania's Church Property Law is Constitutional.

Petitioners argue that this Court should grant review for the following reasons. First, they assert that prior to enactment of the Act of 1935, they had "established property rights" and would have had standing to bring this action. Petition at 7. They next claim that their lack of standing is due to the operation of the Act of 1935, and they suggest that the Act must be held unconstitutional because it has deprived them of their standing in violation of their due process rights to defend their property interests. Petition at 7-10. Finally, they claim that the Act is unconstitutional because it: 1) operates to impair the obligations of contracts in violation of Article I, § 10, cl. 1 of the Constitution (Petition at 8-9); 2) gives a foreign sovereign (Vatican City) the power to change Pennsylvania law, in violation of Article I, § 10, cl. 3 and Article IV, § 4 of the Constitution (Petition at 9); and 3) violates the Establishment Clause of the First Amendment by incorporating the law of the Roman Catholic Church into the civil property law (Petition at 9).

As set forth below, each of these arguments is premised upon erroneous assumptions and lacks merit. Thus, they are not worthy of review by this Court.

1. Contrary to Petitioners' assertions, their lack of standing is not due to the operation of the Act of 1935.

Rather it is due to the operation of the ecclesiastical decrees of suppression issued by Bishop Wuerl which deprived them of membership in the congregations which they claim to represent.

St. Casimir's Polish Roman Catholic Church's Case, 273 Pa. 494, 117 A. 219 (1922), involved similar circumstances where a Roman Catholic Parish was divided by ecclesiastical decree and some of the former members were assigned to new parishes. That case arose prior to enactment of the Act of 1935, but the outcome was the same. The Court held that the former members lacked standing to bring the action due to their loss of church membership by virtue of ecclesiastical decree.

Thus, it is clear that Petitioners would have lacked standing to bring this action under Pennsylvania law both before and after enactment of the Act of 1935. Moreover, because Petitioners' lack of standing is due to the private actions of the Bishop, any claim that their due process rights have been violated must fall because the requisite state action is lacking.

2. Petitioners, likewise, are mistaken in claiming that they had "established property rights" prior to enactment of the Act of 1935. They erroneously cite *Krauczunas v. Hoban*, 221 Pa. 213, 70 A. 740 (1908) in support of this claim. It is clear, however, that Petitioners would not have had any "vested" property rights under Pennsylvania law prior to the Act of 1935 and that *Krauczunas* is not applicable.

The aggrieved parishioners, in *St. Casimir's*, had argued (as Petitioners do here) that they had vested rights in the church property which could not be taken

away. 273 Pa. at 499, 117 A. at 220-221. In rejecting this argument, the Pennsylvania Supreme Court stated:

> Appellants treat the question before us, as one of property rights in the church vested in them, but the difficulty this meets with is, that there can be no property rights in church property, save through membership in the congregation, and this essential cord of membership, to tie themselves to the church property, petitioners do not now possess.

Id. The Court then distinguished *Krauczunas*, stating:

> We know of no legislation which gives to a member of a congregation a property right in his membership therein. His rights in the church property flow from his membership. We are not in any way impairing the principle announced in *Krauczunas v. Hoban*, 221 Pa. 213, that church property belongs to the congregation of the church. The difficulty here is that appellants are no longer members of the congregation.

Id.

The Pennsylvania Supreme Court also examined the question of whether "the Act of 1935 because of its retrospective character take[s] property without due process of law, and divest[s] church lay members of vested property rights." *Canovaro*, 326 Pa. at 88. It held that the Act "does not constitute a divestment of a vested property right" and that it constitutionally "applie[s] with full force to all property acquired by religious societies either prior or subsequent to its enactment." *Id.* at 96. *See also, Post*, 326 Pa. at 103. Given that Petitioners had no vested property right at stake prior to enactment of the Act of 1935, that Act could not operate to impair any contractual

rights of Petitioners in violation of Article I, Section 10, Clause 1. *See, Fletcher v. Peck*, 6 Cranch 87 (1810) (impairment of contract right exists where right has vested).

3. Petitioners also claim that the Act of 1935 is unconstitutional because it gives a foreign sovereign (Vatican City) "the power to determine and change property law and legal standing in Pennsylvania" and "surrenders the State's law making authority to an absolute monarch, the ruler of Vatican City." Petition at 9.

Underlying each of Plaintiffs' claims in this regard is the mistaken notion that the Commonwealth has abdicated its authority to establish how property rights will be determined in Pennsylvania. In reality, the General Assembly, by virtue of the Act of 1935, has exercised its power to determine how property rights of churches will be determined and has decided that they will be determined according to church law.[4] Petitioners are simply dissatisfied with the manner in which the Commonwealth has chosen to exercise its authority.

4. Petitioners' final argument is that, in providing that church property is to be disposed of according to church law, the state has impermissibly incorporated the law of the Roman Catholic Church into the civil law in violation of the Establishment Clause of the First Amendment. Petition at 9.

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[4] This is not only a permissible choice of the Commonwealth, it is required by the Free Exercise Clause of the First Amendment which protects the right of churches to govern themselves according to their own laws.

As evidenced by numerous decisions of this Court, the Commonwealth's recognition of the right of religious societies to form associations and govern themselves according to their own laws does not violate the Establishment Clause of the First Amendment to the United States Constitution.[5] Rather, such accommodation is required by the Free Exercise Clause. Thus, the Act of 1935 is not unconstitutional on these grounds.

CONCLUSION

The state court correctly held that Petitioners lacked standing to bring this action and properly refused to address the federal constitutional questions raised by Petitioners. That court's decision is in complete conformity with the decisions of this Court and none of the considerations which would support a grant of review

[5] *See, e.g., Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136, 145 (1987) ("This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause."); *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 337 (1987) ("A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose.")

are present in this case. Accordingly, Respondent, Bishop Wuerl, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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